

Estate Planning in the Military

by CPT Jonathan Hoag

“In this world nothing is certain but Death and Taxes” – Benjamin Franklin.

While Ben Franklin’s famous quip may seem humorous, a whole area of law focuses largely on the combination of those two topics: Death and Taxes. That area of the Law is called “Estate Planning.” Your “estate” is simply the whole of your possessions and generally refers to all property, assets, and debts left upon your death. Estate planning is the process of maximizing the amount of money that you acquire in life, and making sure that largest portion of this is left to those who you want to receive it (your beneficiaries) while reducing the amount of estate tax and probate court costs.

Even if you have never thought about it before, you already have an estate plan. Every state has a statutory estate plan. This means that if you were to die without a will the law of that particular state would determine how your property should be divided. Generally this means that if you are married, your estate would be divided between your wife and children, or if you are single, your immediate family. This process will continue until the state can no longer find any living relatives and, contrary to popular belief, this almost never happens.

If you want to take a more active roll in your estate plan, there are several common op-

tions: you can hold property in joint tenancy; you can provide for your beneficiaries with contractual devices such as life insurance; you can make a Will; or finally, you can set up a Trust. Which option or combination of options works best for you depends on several factors. Those factors include the size of a service member’s estate, their marital status, and whether or not they have children. The reason it is important to understand these factors is illustrated in the example below:

Assume that a Husband and Wife have a large bank account that they own jointly. If something were to happen to either party then the surviving spouse would acquire sole ownership of the account, and avoid the hassle and additional cost of probate court. Let’s assume, however, that the couple has one child and also that the Husband has a child from a former marriage. Let’s further assume that the Wife has not adopted the child. A Joint Tenancy would be ill-advised if the Husband wants to provide for the child of his first marriage. If the Husband were to die, the Wife will become the

sole owner of the assets in the account. The Husband could only hope that his Wife would use some of the money in the joint bank account for the benefit of his first child. If, however, the Wife died shortly thereafter then all the money in the account would be distributed by her will or statutory estate plan and would exclude the Husband’s child from a former marriage unless she has specifically provided for that child.

While this example may appear to be a convoluted way to stress an important point, it’s a scenario I have all too often encountered in real life. In these cases I have advised Soldiers on ways to more adequately protect their children.

The Soldier in the above scenario can remedy the situation by several methods. One of these methods is to draft a will which specifically bequeaths (gives) assets to the child from a former marriage. Another method and, perhaps, the better method if that child is still a minor, is to create a trust for the benefit of the child. A trust is where property, in this case the money in the joint bank

account, is given to a Trustee. The Trustee has a duty to hold that money and invest it prudently for the benefit of the named beneficiaries, in this case the Husband’s child from a former marriage. In any event, it would be wise to discuss these matters with an attorney and, since our clients are entitled to free legal advice, why not be safe?

Unfortunately, the area of estate law and planning is a vast topic which prevents me from an in-depth discussion here. The important takeaway is that while not everyone may need a complicated estate plan, a quick consultation can usually expose any pitfalls such as the one in the scenario above. Remember that generally childless, single Soldiers who have modest assets do not normally need an estate plan. However, married Soldiers with children or those with substantial assets should consider consulting with an attorney regarding their estate plan.

For further information on wills and estate planning, contact the Kaiser-slautern Legal Assistance Office at DSN 483-8848 or 0631-411-8848.